

Below is an Opinion of the Court.

  
RANDALL L. DUNN  
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF OREGON

In Re: ) Bankruptcy Case  
JOHN A. PAHL, ) No. 09-30495-rld7  
Debtor. ) MEMORANDUM OPINION

On April 2, 2013, I held an evidentiary hearing ("Hearing") on the Amended Final Application for Accountant's Compensation ("Amended Final Application") filed by Henderson Bennington Moshofsky, P.C. ("Henderson Bennington") as accountants for the bankruptcy estate of John A. Pahl ("Mr. Pahl"). Mr. Pahl appeared to object to the Amended Final Application.

In deciding this matter, I have considered carefully the testimony of Judith Bennington, a principal of Henderson Bennington, and the Amended Final Application itself, as well as arguments presented by the chapter 7<sup>1</sup> trustee, Kenneth S. Eiler ("Trustee"), and Mr. Pahl. I

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<sup>1</sup> Unless otherwise indicated, all chapter and section references are to the Bankruptcy Code, 11 U.S.C. §§ 101-1532, and all "Rule" references (continued...)

1 further have taken judicial notice of the docket and documents filed in  
2 Mr. Pahl's main chapter 7 case, Case No. 09-30495-rld7, for the purpose  
3 of confirming and ascertaining facts not reasonably in dispute. Federal  
4 Rule of Evidence 201; In re Butts, 350 B.R. 12, 14 n.1 (Bankr. E.D. Pa.  
5 2006). In addition, I have reviewed relevant legal authorities.

6 Facts<sup>2</sup>

7 Mr. Pahl commenced this chapter 7 case by filing his bankruptcy  
8 petition on January 28, 2009. The Trustee is the duly appointed trustee  
9 in Mr. Pahl's bankruptcy case.

10 In his Schedules D, E and F, Mr. Pahl scheduled secured debt  
11 totaling \$537,828, priority claims of \$0, and undisputed unsecured claims  
12 totaling \$87,530.16. After the chapter 7 case was filed, Mr. Pahl  
13 received a payment of \$196,948.27 from the payoff of a promissory note.  
14 Eventually, \$100,000 from that payoff was turned over to the Trustee,  
15 making Mr. Pahl's bankruptcy case one of those rarities in chapter 7, a  
16 solvent case--meaning that allowed unsecured claims in Mr. Pahl's  
17 bankruptcy case will be paid 100 cents on the dollar.<sup>3</sup> The order  
18 granting a discharge to Mr. Pahl was entered on May 18, 2009. See Docket  
19 No. 14.

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20  
21 <sup>1</sup>(...continued)  
22 are to the Federal Rules of Bankruptcy Procedure, Rules 1001-9037. The  
23 Federal Rules of Civil Procedure are referred to as "Civil Rules."

24 <sup>2</sup> The background facts come primarily from documents on the court's  
25 docket and the narrative included in the Amended Final Application.

26 <sup>3</sup> Mr. Pahl attempted to limit the amount that he would have to pay  
to his creditors by filing objections to most claims filed in the case,  
requesting that they be disallowed in full, notwithstanding his schedules  
in which he averred that all scheduled unsecured claims were undisputed.

1           The Trustee filed an application and order, that was entered by  
2 the court on September 17, 2010, to employ Henderson Bennington  
3 ("Application to Employ") with compensation not to exceed \$2,000 to  
4 perform accounting services and prepare fiduciary tax returns. See  
5 Docket No. 37. The assignment was not without its difficulties. The  
6 Trustee filed an additional application and order, that was entered by  
7 the court on March 21, 2011, to employ Henderson Bennington ("Additional  
8 Application") with compensation not to exceed a further \$1,000 for  
9 accounting services and preparation of fiduciary tax returns. See Docket  
10 No. 104. On April 7, 2011, Mr. Pahl objected ("Objection") to the  
11 Additional Application on the ground that "[t]his would bring the total  
12 projected accountant fees to \$3,000.00 for services that could be  
13 obtained for less than 20% of this amount." See Docket No. 109.

14           The Trustee responded to the Objection, advising that Henderson  
15 Bennington had filed final fiduciary returns ("Initial Returns") for the  
16 estate, showing taxes of \$8,404 due to the Internal Revenue Service  
17 ("IRS") and \$7,854 due to the Oregon Department of Revenue ("ODR"), and  
18 had sent a final billing statement to the Trustee in the amount of  
19 \$2,359.87. The Trustee further requested that the Objection be overruled  
20 and that Mr. Pahl be ordered to turn over an additional \$10,000 forthwith  
21 so that administration of his bankruptcy estate could be completed. See  
22 Docket No. 112.

23           Mr. Pahl responded with a Petition to Disallow Administrative  
24 Expenses and Dismiss Case ("Petition to Dismiss") in which, among other  
25 things, Mr. Pahl alleged that:  
26

1           2. Trustee has caused tax returns to be prepared  
2           after having had his accountants advised that debtor  
3           would not owe any such taxes. Tax returns  
4           subsequently filed by debtor for tax year 2010 verify  
5           this.

6           . . .  
7           4. Trustee's "accountant" prepared taxes that were,  
8           even if a tax return had been required, improperly  
9           prepared and failed to take advantage of significant  
10          allowable deductions.

11          5. Trustee's claimed fees include a percentage of the  
12          "fees" charged by the accountant. These fees are set  
13          at several multiples of the reasonable and ordinary  
14          fees charged by equally qualified accountants in this  
15          area. . . .

16          See Docket No. 122 (emphasis added).

17               The Trustee filed a response ("Response") to the Petition to  
18          Dismiss, including, among other things, the following statements:

19               Initially, the Trustee would note that the debtor  
20               continues to assert, without evidence, that the estate  
21               is not liable to pay any taxes on the proceeds from a  
22               promissory note that was the subject of the Turnover  
23               Motion filed by the Trustee (Dkt #28) and later  
24               stipulated to by the debtor (Dkt #44). The Trustee's  
25               accountant will be present in court to detail as  
26               needed the necessity to file tax returns in this  
27               matter. However, it is axiomatic that a transaction  
28               which paid the debtor in excess of \$196,000 requires  
29               the filing of a tax return.

30          See Docket No. 123 (emphasis added).

31               A hearing ("Dismissal Hearing") was held on the Additional  
32          Application, the Objection and the Petition to Dismiss, among other  
33          matters, on September 30, 2011. At the conclusion of the Dismissal  
34          Hearing, the court denied the Petition to Dismiss, provided some guidance  
35          as to the total amount of allowed unsecured claims and interest accrued  
36          thereon, and deferred consideration of final compensation for Henderson  
37          Bennington pending completion of their accounting work for the estate.  
38          The court further required Mr. Pahl to deliver copies of his 2005-2010

1 tax returns to chambers in confidence for inspection by Ms. Bennington,  
2 without allowing her to make copies of the returns. See Docket No. 124.  
3 Mr. Pahl subsequently provided his tax returns for 2007, 2008, 2009 and  
4 2010 for in camera review, and Ms. Bennington reviewed them. See Docket  
5 No. 131. The copies of his tax returns then were returned to Mr. Pahl.  
6 See Docket No. 132.

7           On October 11, 2011, Mr. Pahl filed an objection to Henderson  
8 Bennington's claim for compensation in the amount of \$2,359.37,  
9 requesting that the claim be disallowed in full. See Docket No. 127. On  
10 the same day, the court entered an order advising that, "The court will  
11 take no action on the debtor's objection to the trustee's supplemental  
12 application to employ and compensate the accountant (#104) pending the  
13 filing of the accountant's request for final compensation." See Docket  
14 No. 128.

15           Mr. Pahl objected that the Initial Returns were incorrect as  
16 there were loss carry forwards which should have been used to offset the  
17 taxable income reported. After Ms. Bennington reviewed the copies of his  
18 tax returns that Mr. Pahl provided for in camera review, Henderson  
19 Bennington prepared amended fiduciary tax returns ("First Amended  
20 Returns") for the year ended February 28, 2011, incorporating net  
21 operating loss carry forwards. The First Amended Returns showed the  
22 estate as entitled to refunds of \$1,231 from the IRS and \$739 from the  
23 ODR.

24           Mr. Pahl objected to these amended returns as they did  
25 not include the capital loss carry forward on the  
26 disposition of the beach house. It had been  
[Henderson Bennington's] understanding that the beach  
house was being built for Mr. Pahl's personal use.

1 After several talks with Mr. Pahl's accountant,  
2 receiving information from the accountant and a letter  
3 to Mr. Pahl requesting clarification on intent of  
4 whether this property was to be personal or investment  
5 [Henderson Bennington] prepared a second amended  
6 return ["Second Amended Returns"] for the year ended  
February 28, 2011. [Henderson Bennington] was not  
aware this property was 1031 exchange investment  
property the disposition of which further reduced the  
estate tax liability. The estate received a federal  
refund of \$7,177.00 and state refund of \$7,115.00.

7 Amended Final Application, Schedule A.

8 In the Amended Final Application, Henderson Bennington  
9 requested total compensation of \$2,875.25 for professional accounting  
10 services and \$12.50 in cost reimbursements, for a total of \$2,887.50. At  
11 the Hearing, Ms. Bennington testified as to the amount of compensation  
12 requested, confirming and elaborating on the narrative included as  
13 Schedule A to the Amended Final Application. She further confirmed that,  
14 with the piecemeal receipt of information and documentation from Mr. Pahl  
15 and his accountants, the estate's final fiduciary returns had to be  
16 amended twice to get to final results. The Amended Final Application  
17 includes an itemization of time spent on work for Mr. Pahl's estate that  
18 I have reviewed.

19 Mr. Pahl's primary argument at the Hearing was that the Trustee  
20 and Henderson Bennington were told from day one by him and by his  
21 accountant(s) that no tax was owed on the \$196,948.27 promissory note  
22 payoff. Therefore, they wasted time and money preparing fiduciary tax  
23 returns. He further argued that Henderson Bennington's hourly rates for  
24 accounting services were too high, without submitting any evidence as to  
25 what appropriate hourly rates should be.

26 Following the presentation of testimony and argument, I took

1 the matter under advisement.

2 Jurisdiction

3 I have jurisdiction to decide this matter under 28 U.S.C.  
4 §§ 1334, 157(b)(1) and 157(b)(2)(A).

5 Discussion

6 A. Standards for Approving Compensation to Estate Professionals

7 Under § 330(a)(1), after notice and a hearing, I am authorized  
8 to award compensation to estate professionals consistent with the  
9 following standards:

- 10 (A) reasonable compensation for actual, necessary  
11 services rendered by the trustee, examiner, ombudsman,  
12 professional person, or attorney and by any  
13 paraprofessional person employed by any such person;  
and  
(B) reimbursement for actual, necessary expenses.

14 No issue has been raised by Mr. Pahl as to the \$12.50 expenses for which  
15 Henderson Bennington requests reimbursement. So, the issues to be  
16 resolved focus on whether the professional accounting services performed  
17 by Henderson Bennington for the estate were necessary and whether the  
18 compensation they are requesting is reasonable in light of the services  
19 performed.

20 B. Necessity for Services and Reasonableness of Compensation Requested

21 "The majority of courts have determined the 'necessity' of  
22 particular services from the perspective of the time that the services  
23 were rendered, rather than based on hindsight after services had been  
24 performed." 3 Collier on Bankruptcy ¶ 330.03[1][b][iii] (Alan N. Resnick  
25 and Henry J. Sommer eds., 16th ed.), citing In re Krause, 155 F. 702  
26 (S.D.N.Y. 1907).

1           In this case, the estate received a \$100,000 payment from a  
2 \$196,948.27 promissory note payoff. The Trustee determined, and  
3 Henderson Bennington agreed, that in these circumstances, fiduciary tax  
4 returns needed to be prepared and filed for the estate before the estate  
5 could be closed. Mr. Pahl has argued early and often that the returns  
6 were not necessary because there was no tax owed. That statement,  
7 however vehemently expressed, is like, "The check's in the mail."  
8 Prudent trustees and estate professionals apply the principle perhaps  
9 most memorably stated by former President Reagan to such representations:  
10 "Trust, but verify." In fact, they are required to do so by the duties  
11 imposed upon them by the Bankruptcy Code. See, e.g., §§ 323 and 327.

12           Mr. Pahl never provided copies of his tax returns evidencing  
13 loss carry forwards to the Trustee. Those returns were only finally made  
14 available for in camera review by Ms. Bennington after issues between the  
15 Trustee and Mr. Pahl had been brought to a head at the Dismissal Hearing.  
16 Unfortunately, this was after the Initial Returns already had been  
17 prepared and filed. Once Ms. Bennington had the opportunity to review  
18 the tax returns that Mr. Pahl provided, Henderson Bennington prepared and  
19 filed the First Amended Returns, only to be confronted by Mr. Pahl's  
20 further objection that the returns were still wrong because they did not  
21 account for 1031 exchange property. Information with respect to Mr.  
22 Pahl's 1031 exchange position had not been provided previously to  
23 Henderson Bennington. After further communications with Mr. Pahl and his  
24 accountant(s)<sup>4</sup>, Henderson Bennington prepared and filed the Second

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26           <sup>4</sup> Mr. Pahl had an accountant in Tillamook, Oregon, and in cross-  
(continued...)



1 Amended Returns.

2           In these circumstances, it is unfortunate that the fiduciary  
3 tax returns had to be revised twice before they really were final, but  
4 the responsibility for that extra work rests with Mr. Pahl. If he had  
5 provided the Trustee with the documentation required to establish that,  
6 in fact, no taxes were owed on the funds received by the estate at the  
7 outset, some professional expense could have been avoided. However,  
8 based on the situation faced by the Trustee and Henderson Bennington as  
9 it unfolded, I find that the services performed by Henderson Bennington  
10 in preparing the Initial Returns and the subsequent First Amended Returns  
11 and Second Amended Returns were necessary.

12           The efforts expended by personnel of Henderson Bennington  
13 performing accounting services for Mr. Pahl's estate are itemized in  
14 detail in Schedule B to the Amended Final Application, which as I  
15 indicated above, I have reviewed. Mr. Pahl has not challenged that  
16 Henderson Bennington personnel actually performed the services set forth  
17 in the Schedule B itemization. Accordingly, I find that the services  
18 reflected on the Schedule B itemization actually were performed.

19           Finally, the question is whether the charges for the services  
20 performed by Henderson Bennington were reasonable. Recall that in the  
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22           <sup>4</sup>(...continued)  
23 examination of Ms. Bennington, he elicited an admission that she had  
24 spoken at some point with this accountant. He later hired an accountant  
25 in Woodburn, Oregon, with whom Ms. Bennington also spoke. According to  
26 Mr. Pahl, his change of accountants was necessitated by the fact that in  
his last meeting with the Tillamook accountant, the meeting ended with  
the accountant essentially throwing Mr. Pahl out of his office and  
advising Mr. Pahl that he was through performing services for him.

1 Objection, Mr. Pahl argued, without evidence, that the estate accountant  
2 fees of approximately \$3,000 "could be obtained for less than 20% of this  
3 amount." At the Hearing, Mr. Pahl argued that accountant fees of \$280 an  
4 hour were too high. It was pointed out to Mr. Pahl at the Hearing that  
5 the highest hourly rate reflected in the Amended Final Application for  
6 any Henderson Bennington accountant (Ms. Bennington) was \$230 an hour.  
7 (It is worthy of note that Ms. Bennington only billed 1.1 hours time at  
8 \$230 an hour. She billed 7.5 hours at \$215 an hour and 2.1 hours at  
9 \$107.50 an hour.) Mr. Pahl never presented any evidence as to what  
10 "reasonable" hourly accountant charges should be.

11 The hourly rates in the Amended Final Application range from  
12 \$107.50 to \$230 per hour for accounting services. Based on my review of  
13 applications for approval of compensation for accountants over the last  
14 fifteen plus years of my service as a bankruptcy judge, I do not find  
15 Henderson Bennington's billing rates unreasonable. I further find that  
16 it is reasonable to apply a "lodestar" approach to awarding reasonable  
17 compensation to Henderson Bennington in this case, as is customary  
18 generally in the Ninth Circuit. See, e.g., Ballen v. City of Redmond,  
19 466 F.3d 736, 746 (9th Cir. 2006). The lodestar method multiplies the  
20 number of hours reasonably expended by the professionals by their  
21 reasonable hourly rates. See, e.g., McGrath v. County of Nevada, 67 F.3d  
22 248, 252 (9th Cir. 2006).

23 Applying that calculation to the time itemized by Henderson  
24 Bennington in the Amended Final Application, I arrive at a total of  
25 \$2,875.25, which is the total amount requested for compensation by  
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1 Henderson Bennington in the Amended Final Application.<sup>5</sup>

2 Conclusion

3 Based on the foregoing recitation of background facts and the  
4 legal analysis applied to those facts, I conclude that it is appropriate  
5 to award final compensation and reimbursement of expenses to Henderson  
6 Bennington in the amounts of \$2,875.25 fees and \$12.50 expenses, for a  
7 total of \$2,887.75. An order consistent with this Memorandum Opinion  
8 will be entered.

9 ###

10 cc: John A. Pahl  
11 Kenneth S. Eiler, Trustee  
Henderson Bennington Moshofsky, PC

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23  
24 <sup>5</sup> I confirmed with the Trustee at the Hearing that he was not going  
25 to renew his request that Mr. Pahl turn over any additional funds to the  
26 estate. The estate has enough money in hand to pay all allowed unsecured  
claims plus interest and all administrative expenses, whatever I rule in  
this matter. The issue for Mr. Pahl is how much, if anything, he gets  
back from the \$100,000 he turned over to the Trustee.